

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Offic**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 09/460,324      | 12/10/99    | KASHA                | K 411044.9002       |

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| EXAMINER |
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BAKER, W

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| ART UNIT | PAPER NUMBER |
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1661

*[Signature]* DATE MAILED: 09/27/01 *[Signature]*

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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| <b>Office Action Summary</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Application No.<br><b>09/460,324</b>    | Applicant(s)<br><b>Kasha et al.</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Examiner<br><b>Wendy Couchoud Baker</b> | Art Unit<br><b>1661</b>             |
| <i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                         |                                     |
| <b>Period for Reply</b> <p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>1</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p> <ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul> |                                         |                                     |
| <b>Status</b> <p>1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Dec 10, 1999</u></p> <p>2a) <input type="checkbox"/> This action is <b>FINAL</b>.      2b) <input checked="" type="checkbox"/> This action is non-final.</p> <p>3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11; 453 O.G. 213.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                         |                                     |
| <b>Disposition of Claims</b> <p>4) <input checked="" type="checkbox"/> Claim(s) <u>1-30</u> is/are pending in the application.</p> <p>4a) Of the above, claim(s) _____ is/are withdrawn from consideration.</p> <p>5) <input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6) <input type="checkbox"/> Claim(s) _____ is/are rejected.</p> <p>7) <input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8) <input checked="" type="checkbox"/> Claims <u>1-30</u> are subject to restriction and/or election requirement.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                         |                                     |
| <b>Application Papers</b> <p>9) <input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10) <input type="checkbox"/> The drawing(s) filed on _____ is/are objected to by the Examiner.</p> <p>11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a)<input type="checkbox"/> approved b)<input type="checkbox"/> disapproved.</p> <p>12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                         |                                     |
| <b>Priority under 35 U.S.C. § 119</b> <p>13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).</p> <p>a)<input type="checkbox"/> All b)<input type="checkbox"/> Some* c)<input type="checkbox"/> None of:</p> <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> Certified copies of the priority documents have been received.</li> <li>2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</li> <li>3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> </ol> <p>*See the attached detailed Office action for a list of the certified copies not received.</p> <p>14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).</p>                                                                                                                                            |                                         |                                     |
| <b>Attachment(s)</b> <p>15) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____</p> <p>18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____</p> <p>19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>20) <input type="checkbox"/> Other: _____</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                         |                                     |

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**Election/Restriction**

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I.      Claims 1 through 22 and 25 through 27, drawn to a method for producing a plant embryo from a microspore or a transformed microspore, classified in class 435, subclass 469.
- II.     Claims 23, 24, and 28 through 30, drawn to a plant embryo, a plant, a transgenic microspore, a transgenic embryo and a transgenic plant, classified in class 800, subclass 299.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II and are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make an other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the products of claims 23, 24, and 28 through 30 could be made by a materially different process, for example, other known in vitro methods or the microspore could be obtained from the pollen of a transgenic plant.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

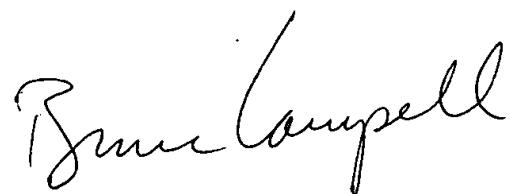
**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wendy C. Baker whose telephone number is (703) 308-8898. The Examiner is generally available Monday through Friday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (703) 308-4205. The fax number for the group is (703) 305-3041 or 308-4242.

Any inquiry of a general nature or relating to the status of this application should be directed to the Matrix Customer Service Center whose telephone number is (703) 308-0196.

W. C. Baker



BRUCE R. CAMPELL, PH.D  
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TECHNOLOGY CENTER 1600